Supreme Court, U.S.
FILED
OCT 18 2006
OFFICE OF THE CLERK

No. 06-682

*In The*
*Supreme Court of the United States*

---

BOARD OF SUPERVISORS OF PALMYRA TOWNSHIP;
PALMYRA TOWNSHIP,

*Petitioner,*

v.

LAKESIDE RESORT ENTERPRISES, LP;
LAKESIDE WATERS EDGE, INC.;
PAUPACK HOLDING, INC.;
LAKESIDE WATER SYSTEM, INC.;
EDWIN, INC.; MARK GAWRON;
MARCELLA GAWRON;
GERALD GAWRON; JEROME GAWRON,

*Respondents.*

---

**On Petition For Writ Of Certiorari**
**To The United States Court Of Appeals**
**For The Third Circuit**

---

# PETITION FOR WRIT OF CERTIORARI

---

Patrick J. Murphy, Esquire
*Counsel of Record for Petitioner*
Murphy, Piazza & Genello, P.C.
Scranton Life Building, Suite 300
538 Spruce Street
P.O. Box 909
Scranton, PA 18501
(570) 344-9444

## QUESTION PRESENTED

Whether a proposed drug and alcohol treatment facility to replace a hotel facility is a "dwelling" under the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq.

## TABLE OF CONTENTS

Question Presented ..... i

Table of Contents ..... ii

Table of Authorities ..... iii

Opinions Below ..... 1

Jurisdiction ..... 1

Statutory Provision Involved ..... 1

Statement of Case ..... 1

A. Statement of Facts ..... 2

B. Decisions Below ..... 7

Reasons for Granting the Petition ..... 7

I. This Court Should Resolve the Question of Whether a Proposed Drug and Alcohol Treatment Facility Qualifies as a "Dwelling" Under the Fair Housing Amendments Act .... 7

Conclusion ..... 12

Appendix

Appendix A - Third Circuit Opinion - 07/20/06 ... 1a

Appendix B - District Court Memorandum and Order - 03/03/05 ..... 17a

Appendix C - Statutory Provision Involved - 42 U.S.C. §§ 3601, 3602(b), 3604(f)(1) ..... 21a

# TABLE OF AUTHORITIES

Page

## CASES

Baxter v. City of Belleville, 720 F. Supp. 720 (S.D. Ill. 1989) ..... 9

Cohen v. Twp. of Cheltenham, 174 F. Supp. 2d 307 (E.D. Pa. 2001) ..... 9

Conn. Hosp. v. City of New London, 129 F. Supp. 2d 123 (D.Conn. 2001) ..... 9,10

Hovsons, Inc. v. Twp. of Brick, 89 F.3d 1096 (3d Cir. 1996) ..... 11

Patel v. Holley House Motels, 483 F. Supp. 374 (S.D. Ala. 1979) ..... 9

Schneider v. County of Will, 190 F. Supp. 2d 1082 (N.D. Ill. 2002) ..... 9

United States v. Columbus Country Club, 915 F.2d 877 (3d Cir. 1990) ..... 7-12

United States v. Hughes Memorial Home, 396 F. Supp. 544 (W.D. Va. 1975) ..... 8, 9

## STATUTES

28 U.S.C. § 1254 ..... 1

28 U.S.C. § 1331 ..... 1

28 U.S.C. § 2101 ..... 1

42 U.S.C. §§ 3601 ..... i, 1, 2

42 U.S.C. § 3602(b) ..... 8

## RULES

Supreme Court Rule 13.1 ..... 1

## OPINIONS BELOW

The ruling of the United States Court of Appeals for the Third Circuit dated July 20, 2006 reversing the decision of the District Court is officially reported at 455 F.3d 154 and is reproduced at App. A at 1a.

The memorandum and order of the United States District Court for the Middle District of Pennsylvania dismissing Respondents' claim under the Fair Housing Amendments Act (FHAA) of 1988, 42 U.S.C. §§ 3601 *et seq.* dated March 3, 2005 is reproduced at App. B at 17a.

## JURISDICTION

The order of the United States Court of Appeals for the Third Circuit sought to be reviewed was entered on July 20, 2006. This petition is timely under 28 U.S.C. § 2101 and Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of the order sought to be reviewed. This court has jurisdiction to review the order of the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1254.

## STATUTORY PROVISION INVOLVED

The relevant statutory provision is the Fair Housing Amendments Act (FHAA) of 1988, 42 U.S.C. §§ 3601 *et seq.*, with the pertinent text set out at App. C at 21a.

## STATEMENT OF CASE

The jurisdiction of the district court was invoked under 28 U.S.C. § 1331 (general federal question jurisdiction). The respondents' one remaining federal claim is based upon allegations that the petitioner

violated the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq. The United States Court of Appeals for the Third Circuit reversed the District Court's *sua sponte* dismissal of Plaintiffs' claim under the Fair Housing Amendments Act of 1988.

**A. Statement of Facts**

The respondents, Mark Gawron, Marcella Gawron, Gerald Gawron and Jerome Gawron, are shareholders and/or directors and/or limited partners of various business entities, including respondent, Lakeside Resort Enterprises, LP, that had financial and/or ownership interest in business and property known as the Lakeside Resort Hotel and Marina located on Lake Wallenpaupack in Palmyra Township, Pike County, Pennsylvania. Lakeside Resort Enterprises, LP was the record owner of the property. Lakeside filed a Complaint against the petitioner, Board of Supervisors of Palmyra Township, setting forth various claims including the claim that the Board of Supervisors violated the Fair Housing Amendments Act ("FHAA") of 1988, 42 U.S.C. § 3601 et seq., when it adopted an amendment to the zoning ordinance of Palmyra Township thereby preventing Lakeside from selling its hotel to a buyer who intended to use the hotel as a drug and alcohol treatment center. Following trial testimony, the District Court, *sua sponte*, dismissed the FHAA claim as a matter of law on December 16, 2004 finding that the proposed treatment center, as described in the trial testimony, was not a dwelling under the FHAA.

On December 27, 2004, Lakeside filed a Motion for Reconsideration of the District Court's dismissal of the FHAA claim. On January 17, 2005, Lakeside filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit with respect to the dismissal of the FHAA claim. On March 3, 2005, the District Court

denied the Motion for Reconsideration. Lakeside appealed to the United States Court of Appeals for the Third Circuit which reversed the District Court's decision on July 20, 2006.

Lakeside Resort Hotel and Marina consisted of various businesses including water and sewer services, a hotel restaurant complex, timeshare units, an RV park and marina located in an area zoned as Community Commercial ("CC") Zoning District. Lakeside sought to sell the hotel facility only to Greenway Center, Inc. who intended to use the hotel facility as a drug and alcohol treatment center. Respondents intended to retain ownership and operation of the water and sewer services, timeshare units, RV park and marina.

At all times Lakeside's property was located in the CC Zoning District which is primarily restricted to areas along Lake Wallenpaupack and State Route 507 which parallels the lakeshore. There are many residential developments included in the CC Zoning District especially near the Lakeside Hotel.

In the Fall of 1999, Palmyra Township Administrator Carson Helfrich was asked by the Board of Supervisors to work on a complete update of the Palmyra Township Zoning Ordinance. The zoning ordinance at that time did not contain a definition for treatment centers. In January, 2000, Carson Helfrich began working on the zoning amendments to include definitions for, among others, treatment centers/clinics. His working definition of treatment centers included reference to facilities to provide housing for persons needing treatment and/or counseling for chronic abuse of or addiction to alcohol and/or a controlled substance.

In March, 2000, Carson Helfrich was working on possible amendments specifically regarding treatment

centers/clinics, which for the first time were identified as allowable conditional uses in the Highway Commercial ("HC") Zoning District which is located along major state highways and Interstate 84 which is located away from residential and resort areas. He inserted a specific section dealing with treatment centers/clinics into the draft zoning ordinance in March, 2000. The draft zoning ordinance was provided to the Board of Supervisors in the Spring of 2000 for their review.

In early October, 2000, Palmyra Township Solicitor Anthony Waldron heard a rumor of the possibility that Lakeside intended to locate a juvenile detention facility or a drug and alcohol treatment center in Palmyra Township. Solicitor Waldron then recommended at the October 17, 2000 meeting of the Board of Supervisors that Palmyra Township go forward with the zoning amendments already drafted by Carson Helfrich regarding these two uses. The Board of Supervisors published the proposed amendment to the zoning ordinance on October 19 and 26, 2000 for a hearing to be held on November 17, 2000. A hearing was conducted by the Board of Supervisors on November 17, 2000 which was attended by Marcella and Jerome Gawron and their attorney. No action was taken on the proposed zoning amendment at the November 17, 2000 meeting. The Board of Supervisors held a second meeting on January 2, 2001 regarding the proposed zoning amendment and, following this hearing, adopted the zoning amendment.

Lakeside alleges that it had negotiated the sale of the hotel facility to Greenway Center, Inc. prior to the first publication of the zoning amendment on October 19, 2000. However, Lakeside has never produced an executed agreement to this effect. Lakeside alleges that it had established institutional uses for the property and had been marketing and negotiating for the sale and

subdivision of the property based upon institutional uses of the property, including its use as a drug and alcohol treatment center, and that this was allegedly known by the Board of Supervisors prior to the publication of the proposed amendment on October 19, 2000. However, it was not until November 1, 2000 that Lakeside and Greenway Center, Inc. filed a Conditional Use Application with Palmyra Township identifying the use of the hotel facility as a "Private Personal Care Center". There was no formal notification provided by Lakeside to the Board of Supervisors of the possible use of the property as a drug and alcohol treatment center prior to the filing of the Conditional Use Application on November 1, 2000.

At the regularly scheduled Board of Supervisors November 5, 2000 meeting, the Board of Supervisors determined that it would not schedule a hearing on the Conditional Use Application and that it would be tabled because there was a pending zoning amendment that would have an impact on the proposed use of the property as a drug and alcohol treatment center. Lakeside alleges that the Board of Supervisors at the January 2, 2001 hearing voted to apply the Pending Ordinance Doctrine to the proposed use of the hotel facility and to the pending Conditional Use Application. Palmyra Township held a conditional use hearing regarding the Conditional Use Application on February 20, 2001. The amendment to the zoning ordinance adopted by the Board of Supervisors on January 2, 2001 did not permit a treatment center/clinic to be operated in the CC Zoning District but did allow a treatment center/clinic to be located in HC Zoning District. There are properties zoned in the HC Zoning District in Palmyra Township. Based upon these factors, Solicitor Waldron recommended to the Board of Supervisors that it deny the Conditional Use Application of Lakeside

which was then unanimously denied by the Board of Supervisors.

Solicitor Waldron prepared a written decision dated February 28, 2001 noting that Greenway Center, Inc.'s proposed use of the property was for a treatment center/clinic which was not permitted in the CC Zoning District and that treatment centers/clinics are only zoned for the HC Zoning District. Solicitor Waldron also determined that the Conditional Use Application was subject to the Pending Ordinance Doctrine of Pennsylvania because it was submitted while the amendments to the zoning ordinance were pending. Solicitor Waldron determined that the Conditional Use Application must be denied because a treatment center/clinic was not permitted under the zoning ordinance at the proposed location, the Lakeside Resort Hotel, as it is located in the CC Zoning District.

In its Complaint filed in the District Court, Lakeside alleged that the amendment of the zoning ordinance by the Board of Supervisors was invalid as discriminatory, illegal, and contrary to the laws of the United States including the Fair Housing Amendments Act. Lakeside alleged that the Board of Supervisors discriminated against it as well as persons being treated for drug addiction and alcoholism in an improper exercise of its zoning powers which is unconstitutional and in violation of federal law.

Trial was conducted before the District Court in December, 2004. At trial, Lakeside presented the testimony of Joseph Craparotta, President of Greenway Center, Inc. Mr. Craparotta testified that the average length of stay for a patient at its facility was 14.8 days. Mr. Craparotta alluded to one instance in which a single patient remained for over one year.

### B. Decisions Below

After the close of Lakeside's case at trial, the Board of Supervisors moved for judgment as a matter of law, but the Court denied the motion as to the FHAA claim. The District Court denied a subsequent motion for judgment as a matter of law regarding the FHAA claim. During the Board of Supervisors' case in chief and prior to submission of the matter to the jury, the District Court, *sua sponte*, dismissed the FHAA claim. Lakeside filed a Motion for Reconsideration which was denied by the District Court on March 3, 2005. Previously, Lakeside had filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit in January, 2005. On July 20, 2006, the Third Circuit reversed the District Court's decision.

## REASONS FOR GRANTING THE PETITION

### I. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER A PROPOSED DRUG AND ALCOHOL TREATMENT FACILITY QUALIFIES AS A DWELLING UNDER THE FAIR HOUSING AMENDMENTS ACT.

This case presents an important question of federal law that has not been, but should be, settled by this Court. The Third Circuit's analysis in determining that the proposed drug and alcohol treatment facility, under the facts of this case, qualifies as a "dwelling" under the FHAA is flawed. This Court should settle this important question of federal law.

In the United States v. Columbus Country Club, 915 F.2d 877 (3d Cir. 1990), the Third Circuit discussed the standard utilized for determining whether a structure is a "dwelling" under the FHAA. The Third Circuit

determined that the central inquiry is whether persons intend to remain in a structure for any significant period of time and whether they view the structure as a place to return to. Id. at 881.

The Third Circuit placed significance on the fact that nearly all of the annual country club members returned to their bungalows summer after summer. Id. (emphasis supplied). The Third Circuit also noted in the previous 20 years that there were only 31 transfers of ownership within the community of 46 bungalows. Id. Based upon these facts in addition to the significant period of time spent by annual members in their bungalows of up to 5 months, the Third Circuit determined that the bungalows fell within the ordinary meaning of "residence" and therefore were considered dwellings under the FHAA. Id.

The FHAA defines "dwelling" as follows:

> "a building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one of more families, and any vacant land which is offered for sale or release for the construction or location thereon of any such building, structure, or portion thereof."

42 U.S.C. § 3602(b). The FHAA does not define "residence". The Court in United States v. Hughes Memorial Home, 396 F. Supp. 544, 549 (W.D. Va. 1975) utilized the definition of "residence" as set forth in *Webster's Third New International Dictionary* which defined residence as "a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit".

The Third Circuit in United States v. Columbus Country Club adopted the Court's reasoning in United States v. Hughes with respect to the meaning of the word "residence" and held that the central inquiry is whether the individuals intend to remain in the specific buildings/structures for any significant period of time and whether they viewed the buildings/structures as a place to return to.

In its Opinion in this matter, the Third Circuit noted that other Courts held that a motel was not a dwelling, Patel v. Holley House Motels, 483 F. Supp. 374, 381 (S.D. Ala. 1979), that a children's home with a four-year average stay was a dwelling, United States v. Hughes Memorial Home, 396 F. Supp. 544, 549 (W.D. Va. 1975), and that a hospice for terminally ill AIDS patients was a dwelling, Baxter v. City of Belleville, 720 F. Supp. 720, 731 (S.D. Ill. 1989). Further, the Third Circuit noted that a bed and breakfast has been held not to be a dwelling under the FHAA. See Schneider v. County of Will, 190 F. Supp. 2d 1082, 1087 (N.D. Ill. 2002). In discussing the significant period of time inquiry, the Court noted that a children's group home with an anticipated stay of 9 or 10 months is a dwelling, Cohen v. Twp. of Cheltenham, 174 F. Supp. 2d 307, 323 (E.D. Pa. 2001), and group homes for drug and alcohol treatment in which residents stayed on average 6 weeks are dwellings, Conn. Hosp. v. City of New London, 129 F. Supp. 2d 123, 135 (D.Conn. 2001).

In this case, the District Court determined that 14.8 days would be the average resident stay at the proposed drug and alcohol treatment facility of Greenway Center, Inc. as testified to by the president of Greenway Center, Inc. The average stay of 14.8 days is between the usual one or two days stay at a motel which has been held not to be a dwelling, Patel, supra, and a group home for alcohol and drug treatment in which

residents stayed an average of 6 weeks (42 days) which was held to be a dwelling, Conn. Hosp., supra. This Court should settle the important question of whether, under the facts of this case, 14.8 days is a significant period of time to qualify the proposed drug and alcohol treatment facility as a dwelling.

In its Opinion, the Third Circuit placed great emphasis on the possible impact of funding restrictions on the length of time an individual may stay at a facility operated by Greenway Center, Inc. Trial testimony elicited by Lakeside was limited on this point. In fact, trial testimony was sparse on the issue. In its Opinion, the Third Circuit indicated that residents would stay at Greenway Center, Inc. for periods of time much longer than 14.8 days thereby satisfying with ease the significant-day factor. This conclusion is not supported by any of the facts developed at trial. At trial, there was one reference to one individual staying for a lengthy period of time but the average resident would stay 14.8 days. As the Court acknowledged, 14.8 days is much shorter than the 5 months previously held to be a significant period of time. This Court should review the Third Circuit's analysis of the significant period of time factor.

In its Opinion, the Third Circuit concluded that the second factor set forth in Columbus Country Club was "barely" satisfied. The District Court, in dismissing the FHAA claim, determined that the residents would not view the facility as a place to return to because they would live there solely for treatment. The District Court determined that the residents would be like mere transients because they would not view the facility as a permanent residence as they would be at the facility solely for treatment.

In its Opinion, the Third Circuit discussed Columbus Country Club's "place to return to" factor as whether residents would have viewed the facility as their home during the time they were there for treatment. The Third Circuit discussed the factual scenario in Columbus Country Club and placed emphasis on the country club's members repeatedly returning to the same individual bungalow year after year because they felt at home at that particular bungalow. There was no evidence adduced at trial in this matter that any resident viewed the drug and alcohol treatment facility as a place to return to and that they considered the facility as their home for the limited time spent there or that the resident viewed the facility as a place to return to year after year.

The Third Circuit cited Hovsons, Inc. v. Twp. of Brick, 89 F.3d 1096, 1102 (3d Cir. 1996) indicating that the handicapped elderly persons who would reside at the nursing facility would consider the facility to be their home, very often for the rest of their lives. This comparison of a nursing facility to a drug and alcohol treatment facility is flawed. First, the average length of stay in a nursing facility would be much longer than 14.8 days for treatment at a drug and alcohol treatment facility. Second, residents of the nursing facility would expect to remain at the facility in many cases for the rest of their lives. Residents of a drug and alcohol treatment facility would certainly not view the facility in a similar manner. The design of a drug and alcohol treatment center is to treat an individual in the hope of releasing that individual to his/her original home free of the influence of drugs and alcohol. The premise of a drug and alcohol treatment facility is to treat the individual with the hope that they would never return. This Court should correct this flawed reasoning.

The Third Circuit noted that residents of the proposed drug and alcohol treatment center operated by

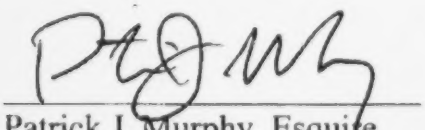
Greenway Center, Inc. would not be allowed off the grounds of the facility unsupervised. The Third Circuit also noted trial testimony about the experience of residents at other Greenway Center, Inc. facilities regarding eating meals together and receiving mail at the facility as indication that the facility was their residence or home. Significantly, the Third Circuit determined that the trial testimony barely satisfied the "place to return to" factor set forth in Columbus Country Club.

On the basis that the second factor of Columbus Country Club was satisfied, the Third Circuit held that the proposed drug and alcohol treatment center was a dwelling under the FHAA. Under such a "close call", this Court should review and settle the Third Circuit's decision on this important question of federal law.

## CONCLUSION

The Court should grant the Petition for Writ of Certiorari and reverse the decision of the Third Circuit Court of Appeals.

Respectfully submitted,



Patrick J. Murphy, Esquire
*Counsel of Record for Petitioner*
Murphy, Piazza & Genello, P.C.
Scranton Life Building, Suite 300
538 Spruce Street, P.O. Box 909
Scranton, PA 18501
(570) 344-9444

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

---

No. 05-1163

---

LAKESIDE RESORT ENTERPRISES, LP;
LAKESIDE WATERS EDGE, INC.;
PAUPACK HOLDING, INC.;
LAKESIDE WATER SYSTEM, INC.;
EDWIN, INC.; MARK GAWRON;
MARCELLA GAWRON;
GERALD GAWRON; JEROME GAWRON,

Appellants

v.

BOARD OF SUPERVISORS OF PALMYRA TOWNSHIP;
PALMYRA TOWNSHIP

---

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 01-cv-01238)
District Judge: Honorable Richard Caputo

---

Argued March 7, 2006

Before: AMBRO and STAPLETON, Circuit Judges,
STAGG,* District Judge

(Opinion filed: July 20, 2006 )

Jeremy A. Haugh, Esquire
Hamlin Corners Professional Building
P.O. Box 735
Hamlin, PA 18427-0735

Ronald V. Santora, Esquire (Argued)
Bresset & Santora
1188 Wyoming Avenue
Forty Fort, PA 18704

Counsel for Appellants

Patrick J. Murphy, Esquire (Argued)
Murphy, Piazza & Genello
Scranton Life Building, Suite 300
538 Spruce Street
P.O. Box 909
Scranton, PA 18501

Counsel for Appellees

---

*Honorable Tom Stagg, Senior District Judge for the Western District of Louisiana, sitting by designation.

OPINION OF THE COURT

AMBRO, Circuit Judge

We consider whether a proposed drug- and alcohol-treatment facility, under the facts of this case, qualifies as a dwelling under the Fair Housing Act. Due to funding restrictions, residents of the facility would stay there for slightly more than two weeks on average. But the facility is intended for longer stays, and many stay longer. Moreover, while they are there, the residents would treat the facility like a home. We therefore deem it a dwelling under the Act.

## I. Factual Background and Procedural History

In late summer 2000, Lakeside[1] was negotiating to sell a resort property to Greenway, Inc., which intended to use the property as a drug- and alcohol-treatment center. That September, they set a price of $1.75 million. The Lakeside property—zoned as Community Commercial—sits on Lake Wallenpaupack in Palmyra Township and includes a hotel-restaurant complex.

[1] Plaintiffs/appellants are members of the Gawron family and the various entities they own or control, including Lakeside Resort Enterprises, LP. In this opinion, we use the name Lakeside to refer to all of them.

In October 2000, Palmyra's Board of Supervisors started working on (and in January 2001 passed) a zoning ordinance amendment that prohibited, among other things, drug- and alcohol-treatment centers in the Community Commercial district. The Board then denied Lakeside's application for a conditional use of the property as a drug- and alcohol-treatment center. As a result, the sale to Greenway fell through.

After losing the sale, Lakeside sued the Board in the Middle District of Pennsylvania, challenging the validity of the ordinance under, *inter alia*, the Fair Housing Amendments Act (FHAA) of 1988,[2] 42 U.S.C. §§ 3601 *et seq.* Lakeside and the Board both filed summary judgment motions, and in June 2003 the District Court denied Lakeside's motion and all but a part of the Board's motion. The suit went to trial, but a mistrial was declared after Lakeside had presented most of its testimony. A new trial began in December 2004. At the close of Lakeside's case, the Board moved for a judgment as a matter of law, but the Court denied it as to the FHAA claim. The Court denied another motion for judgment as a matter of law (renewed by the

---

[2] Title VIII of the Civil Rights Act of 1968 is called the Fair Housing Act. We refer to Lakeside's claim as "the FHAA claim" because it arises under a provision added to the Fair Housing Act by the FHAA.

Board after its first witness), leaving two viable claims,[3] including the FHAA claim.

The District Court decided *sua sponte* to reconsider its denial of the Board's motion for judgment as a matter of law on the FHAA claim, reversed its decision on that motion, and entered judgment for the Board under Federal Rule of Civil Procedure 50(a). Lakeside then moved for reconsideration of this decision. Before the District Court denied the reconsideration motion (which it did in March 2005), Lakeside filed a notice of appeal to our Court in January 2005.[4]

## II. Jurisdiction and Standard of Review

The District Court had jurisdiction under 28 U.S.C. § 1331, and we have appellate jurisdiction under 28 U.S.C. § 1291.

---

[3] The other claim was under the Americans with Disabilities Act (ADA).

[4] The notice of appeal did not become effective until after the District Court ruled on the motion for reconsideration. Fed. R. App. P. 4(a)(4)(B)(I).

The jury had returned a verdict for the Board in December 2004 on the ADA claim; Lakeside's notice of appeal also covered this verdict. But this issue was not briefed to us, so it is waived. *Couden v. Duffy*, 446 F.3d 483, 492 (3d Cir. 2006).

Because the District Court entered a judgment as a matter of law under Rule 50(a), our review is plenary. *Rego v. ARC Water Treatment Co. of Pa.*, 181 F.3d 396, 400 (3d Cir. 1999). We "must view the evidence . . . in a light most favorable to the non-moving party and must give the non-moving party the benefit of all reasonable inferences that can be drawn in its favor." *Id.* We also "exercise plenary review over the question of whether the district court applied an incorrect legal standard." *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1101 (3d Cir. 1996).

## III. Discussion

### A.

The Fair Housing Act proscribes discrimination in the sale of a dwelling due to a handicap[5] of those who are to reside

---

[5] We note that at least two other courts have held that recovering alcoholics and drug addicts are handicapped, so long as they are not currently using illegal drugs. *See United States v. S. Mgmt. Corp.*, 955 F.2d 914, 920–23 (4th Cir. 1992); *Conn. Hosp. v. City of New London*, 129 F. Supp. 2d 123, 125 (D. Conn. 2001); *see also Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 48 (2d Cir. 1997) (same, under the ADA and the Rehabilitation Act), *abrogation on other grounds noted by Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 171 n.7 (2d Cir. 2001).

in the dwelling after the sale. 42 U.S.C. § 3604(f)(1).[6] A dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or in tended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." *Id.* § 3602(b).

We must decide whether the proposed drug- and alcohol-treatment facility is a dwelling under the Fair Housing Act. In making this decision, we are to give a "generous construction" to the statute's "broad and inclusive" language. *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 212 (1972). Our Court has dealt with similar issues twice before. In *United States v. Columbus Country Club*, we decided that a summer bungalow was a dwelling. 915 F.2d 877, 881 (3d Cir. 1990). Then, in

---

[6] This provision makes it unlawful

> [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—
>
> (A) that buyer or renter[;]
>
> (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
>
> (C) any person associated with that buyer or renter.

42 U.S.C. § 3604(f)(1).

*Hovsons, Inc. v. Township of Brick*, we held that a nursing home was a dwelling. 89 F.3d 1096, 1102 (3d Cir. 1996).

As "family" in the statute "includes a single individual," 42 U.S.C. § 3602(c), *Columbus Country Club* held that "residence" is the key word in the dwelling definition, 915 F.2d at 881. Because "residence" is not defined in the statute, we looked instead to the dictionary definition applied by another court 15 years earlier. *Id.* (citing *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975)). Under that definition, a residence is "a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit." *Id.* (internal quotation marks omitted).

Moving to the "dwelling" analysis, we then held that "the central inquiry [was] whether the [country club's] members intend to remain in the bungalows for any significant period of time and whether they view their bungalows as a place to return to." *Id.* Accordingly, we concluded that the Act "'would presumably cover . . . facilities whose occupants remain for more than a brief period of time and who view their rooms as a residence "to return to."'" *Id.* (quoting R. Schwemm, *Housing Discrimination Law* 53 (1983)) (omission in original). We also noted that there was "no indication in the statutory language that Congress intended to limit coverage of the Act to year-round places of abode and exempt seasonal dwellings." *Id.* Because the country club's members returned nearly every summer to the

bungalows and spent up to five months in them, we held that the bungalows were residences. *Id.*

We also wrote approvingly of three cases from other courts, cases holding that a motel was not a dwelling, *Patel v. Holley House Motels*, 483 F. Supp. 374, 381 (S.D. Ala. 1979), that a children's home with a four-year average stay was a dwelling, *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975), and that a hospice for terminally ill AIDS patients was a dwelling, *Baxter v. City of Belleville*, 720 F. Supp. 720, 731 (S.D. Ill. 1989). *See Columbus Country Club*, 915 F.2d at 881.

In our 1996 *Hovsons* case, we had to decide whether a nursing home was a dwelling. After reviewing *Columbus Country Club*'s analysis, we stated simply: "To the handicapped elderly persons who would reside there, [the facility] would be their home, very often for the rest of their lives. We therefore hold that the proposed nursing home is a 'dwelling' within the meaning of § 3602(b)." *Hovsons*, 89 F.3d at 1102.

The District Court, in its summary judgment opinion, decided that the record was not clear on how long the residents were going to stay at the Lakeside treatment facility, so it held that there was a genuine issue of material fact and denied summary judgment on the FHAA claim. But in its Rule 50(a) judgment as a matter of law—after trial testimony on the average length of stay—the Court held that the facility would

not be a dwelling. First, it determined that 14.8 days (the average resident stay) was not a significant period of time. Second, it determined that the residents would not view the facility as a place to return to because they would live there solely for treatment. Third, it determined that the residents would be like mere transients because they would not view the facility as a permanent residence and, as pointed out, they would be there solely for treatment.

Before we begin the analysis in this case, we note that other courts have also addressed similar issues. Some have applied the Fair Housing Act to various facilities without explicitly addressing the "dwelling" question.[7] *See, e.g.*, *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 945 (9th Cir. 1996) (homeless shelters); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 923 (4th Cir. 1992) (drug- and alcohol-treatment

---

[7] And both the Sixth Circuit and (perhaps) Congress suggest that group homes are presumably dwellings. *See, e.g.*, *Larkin v. Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 289 (6th Cir. 1996) ("It is well-settled that the FHAA applies to the regulation of group homes."); H.R. Rep. No. 100-711, at 24 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 2173, 2185 (discussing the kinds of discrimination the Committee intended to prohibit under the FHAA, and noting in particular "the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities").

facility). Several other courts have addressed the issue, coming out on both sides. *See, e.g.*, *Schneider v. County of Will*, 190 F. Supp. 2d 1082, 1087 (N.D. Ill. 2002) (a bed and breakfast is not a dwelling); *Cohen v. Twp. of Cheltenham*, 174 F. Supp. 2d 307, 323 (E.D. Pa. 2001) (a children's group home with an anticipated stay of nine or ten months is a dwelling); *Conn. Hosp. v. City of New London*, 129 F. Supp. 2d 123, 135 (D. Conn. 2001) (group homes for alcohol and drug treatment, in which residents stayed on average six weeks, are dwellings); *Garcia v. Condarco*, 114 F. Supp. 2d 1158, 1163 (D.N.M. 2000) (a city jail is not a dwelling); *Project Life, Inc. v. Glendening*, No. WMN-98-2163, 1998 WL 1119864, at *2 & n.4 (D. Md. Nov. 30, 1998) (suggesting that a decommissioned Navy hospital ship offering one-month stays to women recovering from substance abuse would be a dwelling); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1328 (D. Or. 1996) (cabins occupied by migrant farm workers during the five-month harvest season are dwellings); *Hernandez v. Ever Fresh Co.*, 923 F. Supp. 1305, 1308–09 (D. Or. 1996) (same).

**B.**

To repeat what we quoted above from *Columbus Country Club*, two factors determine whether a specific facility is a dwelling under the Fair Housing Act. First, we must decide whether the facility is "intended or designed" for occupants who "intend to remain in the [facility] for any significant period of time." 915 F.2d at 881. Second, we must determine whether

those occupants would "view [the facility] as a place to return to" during that period. *Id.*

### 1. *Is the facility intended or designed for occupants who would intend to remain for a significant period of time?*

We have not defined what is a "significant period of time" other than to say that (1) five months is significant, *id.*, and (2) "for the rest of [the occupants'] lives" is significant, *Hovsons*, 89 F.3d at 1102. Cases from other courts, cited above, have found sufficient stays ranging from one month to four years.

Trial testimony here put the likely average stay at the proposed facility at 14.8 days. In Greenway's "early days," the average stay was 30 days. (In fact, at least one Greenway resident stayed more than a year.) The 14.8-day stay appears to result chiefly from caps on health-insurance funding, because people—those on "scholarship"—who stay at Greenway's expense often stay longer than that.

But the short, funding-limited, average stay is not dispositive here. Congress considered a dwelling to be a facility "which is occupied as, or designed or *intended*[8] *for occupancy*

---

[8] The Board argues that, because the Lakeside facility was built as a hotel, it cannot meet § 3602(b)'s requirement that

*as, a residence* by one or more families." 42 U.S.C § 3602(b) (emphasis added). The facility (as we infer from the experience of Greenway's other facilities) is intended to accommodate 30-day stays as a matter of course and even longer stays on occasion. Congress did not, by its words, require only that a facility be "occupied as" a residence. Thus, that health-insurance funding limits some residents to 14.8 days or less does not itself deprive the proposed Lakeside facility of its residential status.

Moreover, the 14.8-day stay is an average. This suggests that some people—possibly half, depending on how the average was calculated—stay longer than 14.8 days. The residents on "scholarship," for example, stay longer because they are not limited by funding. In any event, the statute refers to "any building, structure, *or portion thereof*." 42 U.S.C. § 3602(b) (emphasis added). Some rooms in the facility—*i.e.*, a "portion thereof"—would house residents staying for extended periods,

---

a dwelling be "designed or intended for occupancy . . . as a residence." We disagree. Though the facility was built as a hotel, Greenway was planning to turn it into a drug- and alcohol-treatment center. Somewhat analogously, *Baxter* (which we approved of in *Columbus Country Club*) involved an office building that was intended to be converted into an AIDS hospice. 720 F. Supp. at 731. As in *Baxter*, we look here to Greenway's intent to make the Lakeside property a residential treatment center.

thereby satisfying with ease the significant-stay factor.

While 14.8 days is much shorter than the five months we have previously held to have been a "significant period of time," it is certainly longer than the typical stay in a motel[9] or a bed and breakfast, which have been held not to be dwellings under the Fair Housing Act, *see Schneider*, 190 F. Supp. 2d at 1087; *Patel*, 483 F. Supp. at 381. In this context, we conclude that the 14.8-day average stay at the proposed facility is more nuanced than perceived at first blush, and qualifies that facility under the first factor of *Columbus Country Club*.

2. ***Do occupants view the facility as a place to return to?***

*Columbus Country Club*'s second factor ("place to return to") was significant in that case, as club members returned to their bungalows every summer. What we meant by viewing a bungalow as a "place to return to" is that the country club's members saw their individual bungalows as homes. The members repeatedly returned to the same bungalow because they

---

[9] In 2004, 63% of business travelers, and 73% of leisure travelers, spent only one or two nights per hotel stay. Am. Hotel & Lodging Ass'n, *2005 Lodging Industry Profile* 4 (2005), http://www.ahla.com/pdf/Lodging-Ind-Profile-2005.pdf.

felt at home there.[10] Similarly, we noted in *Hovsons* that, "[t]o the handicapped elderly persons who would reside there, [the nursing facility] would be their *home*, very often for the rest of their lives." 89 F.3d at 1102 (emphasis added); *see also Villegas*, 929 F. Supp. at 1328 ("Like the occupants of a homeless shelter, during the farmworkers' employment . . . , the cabins are their *homes*." (emphasis added)).[11]

Trial testimony about the experience at other Greenway facilities showed that the Lakeside residents would eat meals together (separated by gender), return to their rooms in the evening, receive mail at the facility, and make it their "residence" while they were there. Lakeside's counsel at oral argument added that Greenway residents hung pictures on their walls and had visitors in their rooms. Although residents in treatment were apparently not allowed off the grounds of the facility unsupervised, testimony showed that treated it like a home for the duration of their stays. This satisfies (though barely) the second factor of *Columbus Country Club*.

---

[10] The members did not actually own particular bungalows. They owned the land collectively and leased the bungalows from the club. *Columbus Country Club*, 915 F.2d at 879.

[11] On the other hand, visitors to motels and bed and breakfasts do not see those places as their homes. *See Schneider*, 190 F. Supp. 2d at 1087; *Patel*, 483 F. Supp. at 381.

* * * * *

Because the Lakeside facility was intended to house persons for a significant period of time and because those persons would have viewed it as their home during that time, we hold that it is a dwelling under the Fair Housing Act.

## C.

Lakeside argues in its opening brief that, if we hold that the proposed facility is a dwelling, we should also decide in its favor on (1) whether the ordinance amendment was discriminatory and, if so, (2) whether its adoption was properly justified. The Board argues that these issues are not before us on this appeal.

We agree with the Board. These issues were headed to the jury before the District Court deflected them with its judgment as a matter of law. Having held that the facility is a dwelling, we remand these issues to be determined.

## IV. Conclusion

We hold that the facility intended by Greenway as a drug- and alcohol-treatment facility is a dwelling under the Fair Housing Act. Therefore, we reverse the District Court's order and remand the case for further proceedings.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| LAKESIDE RESORT ENTERPRISES, LP, et al., | : | |
| | : | CIVIL ACTION . |
| Plaintiffs, | : | NO. 3:01-CV-1238 |
| v. | : | |
| BOARD OF SUPERVISORS OF PALMYRA TOWNSHIP, et al., | : | (JUDGE CAPUTO) |
| Defendants. | : | |

**MEMORANDUM**

Presently before the Court is Plaintiffs' Motion For Reconsideration Pursuant To Local Rule 7.10. (Doc. 93.) The Court may grant a motion for reconsideration only if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the Court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citing *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)). Litigants should not use a motion for reconsideration to reargue matters already argued and disposed of by prior rulings or to put forth additional arguments that the litigant neglected to make prior to judgment. *See Dodge v.*

*Susquehanna Univ.*, 796 F. Supp. 829, 830 (M.D. Pa. 1992). In deference to the strong interest in the finality of judgments, courts should grant motions for reconsideration sparingly. *Cont'l Cas. Co. v. Diversified Indus., Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995).

The Court must first note that contrary to Defendants' assertion, Local Rule 7.10 permits parties to file a motion for reconsideration of any order, judgment or decree, not just those ruled upon prior to trial. Moving to the merits of the motion itself, Plaintiffs argue that the Court erred in dismissing Plaintiffs' claim under the Fair Housing Amendment Act of 1988 ("FHAA") because the structure in question is not a dwelling. The Court disagrees.

In *United States v. Columbus Country Club*, the United States Court of Appeals for the Third Circuit articulated a standard for determining whether a structure is a dwelling. 915 F.2d 877, 881 (3d Cir. 1990). The Third Circuit noted that the central inquiry is whether the occupants of the structure remain therein for any significant period of time and whether the occupants view the structure as a place to return to or are mere transients. *Id.* In the instant matter,

it appears clear that the occupants receiving treatment at the proposed facility would not remain therein for any significant period of time. Although Plaintiffs presented evidence that individuals might stay at the treatment facility for one year or more, this appears to be the exception rather than the rule. The Court arrives at this conclusion based on the evidence presented at trial that the average stay at the treatment facility would be 14.8 days. Furthermore, it does not appear that the treatment facility is a place which the occupants would view as a place to return to. Rather, occupants would remain at the proposed treatment facility only until their treatment was complete, presumably never to return. That the occupants may potentially view their private rooms at the facility as a place to return to during their treatment is of little consequence because it is the facility as a whole that is at issue, not the individual rooms therein. Therefore, based on the evidence presented at trial, the proposed treatment facility is not a dwelling under the FHAA. Accordingly, the Court will deny Plaintiffs' motion.

An appropriate Order follows.

March 3, 2005
Date

/s/
A. Richard Caputo
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| LAKESIDE RESORT ENTERPRISES, LP, et al., | : | |
| | : | CIVIL ACTION |
| Plaintiffs, | : | NO. 3:01-CV-1238 |
| v. | : | |
| BOARD OF SUPERVISORS OF PALMYRA TOWNSHIP, et al., | : | (JUDGE CAPUTO) |
| Defendants. | : | |

**ORDER**

**NOW**, this 3rd day of March, 2005, **IT IS**

**HEREBY ORDERED** that Plaintiffs' Motion For Reconsideration Pursuant To Local Rule 7.10 (Doc. 93) is **DENIED**.

/s/
A. Richard Caputo
United States District Judge

**42 U.S.C. § 3601. Declaration of policy**

It is the policy of the United State to provide, within constitutional limitations, for fair housing throughout the United States.

**§ 3602. Definitions**

As used in this title -

. . .

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

**§3604. Discrimination in the sale or rental of housing and other prohibited practices.**

As made applicable by section 803 [42 U.S.C. § 3603] and except as exempted by sections 803(b) and 807 [42 U.S.C. § § 3603(b), 3607], it shall be unlawful - -

. . .

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of - -

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

**PROOF OF SERVICE**

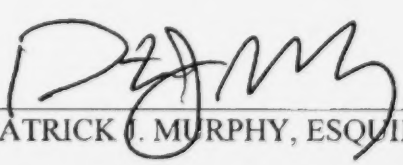
I, PATRICK J. MURPHY, ESQUIRE, do hereby certify that I have served the corrected original and 40 copies of the Petition for Writ of Certiorari of Petitioner, Board of Supervisors of Palmyra Township; Palmyra Township, on the 14th day of November, 2006, by USPS Express Mail, postage prepaid, on the following:

Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543
(202) 479-3011

I further certify that I have served 3 corrected copies of the Petition for Writ of Certiorari of Petitioner, Board of Supervisors of Palmyra Township; Palmyra Township, on the 14th day of November, 2006, by USPS Express Mail, postage prepaid, on the following:

Jeremy A. Haugh, Esquire
*Counsel for Respondents*
6300 Milgen Road
Apartment 1111
Columbus, GA 31907
(706) 587-4227

MURPHY, PIAZZA & GENELLO, P.C.

BY: 
PATRICK J. MURPHY, ESQUIRE